

**PT 00-17**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

---

---

**NORTH SUBURBAN  
LUBAVITCH, INC.  
APPLICANT**

**v.**

**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS**

**Nos: 99-PT-0038  
(98-49-0025)  
P.I.N: 16-23-317-012**

---

---

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Martin A. Blumenthal, attorney at law, on behalf of the North Suburban Lubavich, Inc.

**SYNOPSIS:** This proceeding raises the limited issue of whether real state identified by Lake County Parcel Index Number 16-23-317-012 qualifies for exemption from 1998 real estate taxes under Sections 15-40 and 15-125 of the Property Tax Code, 35 ILCS 200/1-1 *et seq.*

The controversy arises as follows:

North Suburban Lubavitch, Inc. (hereinafter the "applicant") filed an Application for Property Tax Exemption with the Lake County Board of Review (hereinafter the "Board") on November 28, 1998. (Dept. Ex. No. 1). The Board reviewed the application and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department"), that the requested exemption be denied.

The Department agreed with the Board's recommendation by means of a determination dated May 13, 1999. (Dept. Ex. No. 3). Said determination found that the subject property was not in exempt use. (*Id.*). Applicant filed a timely appeal to the Department's determination and subsequently presented evidence at an evidentiary hearing. Following a careful review of the record made at that hearing, and the evidence submitted thereat, I recommend that the subject property be exempt from real estate taxes, but only for 84% of the 1998 assessment year.

### **FINDINGS OF FACT**

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Ex. Nos. 1, 2.
2. The Department's position in this matter is that the subject property is not in exempt use. Dept. Ex. No. 2.
3. The subject property is located at 892 Central, Highland Park, IL 60035. It is within 50 feet of applicant's synagogue, as described in the following diagram:

Parcel 16-23-317-012 (Subject Property)	Parcel 16-23-317-013 (Adjacent property) <sup>1</sup>	Parcel 16-23-317-014 (Applicant's Synagogue)
---	---	--

Dept. Ex. No. 2-B; Tr. p. 14.

4. The Department's Office of Local Government Services issued a determination exempting parcel 014 from real estate taxation on March 9, 1995. The docket number for this exemption, which remained in full force and effect throughout the 1998 tax year, was 94-49-307. Dept. Ex. No. 1; Administrative Notice.

---

1. Parcel 16-22-317-013 it is not at issue herein because applicant did not own it during the 1998 assessment year.

5. Applicant acquired ownership of the subject property, which was improved with an unoccupied 1½-story residence and a small parking area, by warranty deed dated March 2, 1998. Applicant Group Ex. No. 1, Doc. A; Tr. pp. 9-11.
6. Applicant did not lease any portion of the subject property on or after the date of acquisition. It did, however, use the unoccupied residence for synagogue-related storage throughout the balance of the 1998 assessment year. Tr. pp. 9-11.
7. Applicant used the unoccupied residence for storage because it had had been experiencing a shortage of storage space at its synagogue. *Id.*
8. Applicant used the small parking area for synagogue-related parking throughout the balance of the 1998 assessment year. *Id.*

#### **CONCLUSIONS OF LAW:**

An examination of the record established that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting 100% of the subject property from real estate taxes for 84% of the 1998 assessment year. Accordingly, under the reasoning given below, the determination by the Department that said property did not qualify for exemption from 1998 real estate taxes under Sections 15-40 and 15-125 of the Property Tax Code should be modified in accordance with the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The

General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 ILCS 200/1-3 *et seq.* (hereinafter the "Code"). The provisions that govern disposition of this case are found in Section 15-40 and 15-125 of the Code . The former provides, in relevant part, for exemption of the following:

All property used exclusively<sup>2</sup> for religious purposes,<sup>3</sup> or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise use with a view to a profit ...[.]

35 ILCS 200/15-40.

Section 200/15-125 states that:

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the

---

2. The word "exclusively," when used in Sections 200/15-40 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

3. As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

qualifications for exemption, are exempt [from real estate taxation].

35 ILCS 200/15-125.

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, applicant bears the burden of proving, by clear and convincing evidence, that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

Applicant has sustained that burden herein, at least with respect to that portion of the 1998 assessment year wherein it held an ownership interest in the subject property. According to the warranty deed (Applicant Group Ex. No. 1, Doc. B), applicant obtained that interest on March 2, 1998. Therefore, Section 9-185 of the Property Tax Code,<sup>4</sup> which governs exemptions based on changes in ownership or use during any part of a given tax year, limits this particular exemption claim to 84% of the 1998 assessment year.

---

4. Section 9-185 states, in relevant part, as follows:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 ILCS 200/9-185.

With respect to merits of that claim, it is first noted that applicant used the unoccupied residential improvement for synagogue-related storage throughout the period in question. This use served to alleviate applicant's need for additional storage space at its tax-exempt synagogue, which was located within 50 feet of the subject property. Therefore, said use qualifies as exempt on grounds that it was "reasonably necessary" to facilitate another exempt use. Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991); Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985 (4<sup>th</sup> Dist. 1992)

As concerns the small parking area, it must be observed that the applicable statute, Section 15-125, is different from the religious use statute, Section 15-40, in that the former requires *both* exempt ownership and exempt use (Northwestern Memorial Foundation v. Johnson, 141 Ill. App.3d 309 (1<sup>st</sup> Dist. 1986)), whereas the latter requires exempt use alone. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, *supra*.

Based on the facts that: (1) applicant's synagogue enjoyed tax exempt status throughout the tax year in currently in question; and, (2) applicant held an ownership interest in the subject property for 84% of that same tax year, I conclude that the parking area was in exempt ownership throughout the period currently under review.

I further conclude that said area was in exempt use because it was: (1) located within 50 feet of the synagogue it served; (2) actually used for no purpose other than synagogue-related parking throughout the period in question; and, (3) not leased or otherwise used with a view to profit during same. Therefore, the parking area is subject to

exemption under Section 15-125, but only to the extent permitted by Section 9-185, which, in this case, is 84% of the 1998 assessment year.

In summary, the evidence adduced at hearing demonstrates that all portions of the subject property qualify for exemption under the applicable statutes, but only for 84% of the 1998 assessment year. Therefore, the Department's determination to the contrary should be modified to reflect that exemption.

WHEREFORE, for all the above-stated reasons, it is my recommendation that 100% of real estate identified by Lake County Parcel Index Number 16-23-317-012 should be exempt from real estate taxes, but only for 84% of the 1998 assessment year.

10/26/00

Date

---

Alan I. Marcus  
Administrative Law Judge